

**STAFF REPORT**

**15**

A 1

10/24/19  
Lease 3652.1  
A2160  
A. Franzoia

S 1

**GENERAL LEASE – RECREATIONAL USE**

**APPLICANT:**

Joseph A. McCarthy, Trustee of the Joseph A. McCarthy Revocable Trust, dated June 22, 1998, and John F. Brennan and Lisa Brennan

**PROPOSED LEASE:**

*AREA, LAND TYPE, AND LOCATION:*

Sovereign land in Lake Tahoe, adjacent to 4170 and 4176 Ferguson Avenue, near Carnelian Bay, Placer County.

*AUTHORIZED USE:*

Continued use and maintenance of an existing joint-use pier, two boat lifts, and four mooring buoys.

*LEASE TERM:*

10 years, beginning August 20, 2019.

*CONSIDERATION:*

\$2,769 per year, with an annual Consumer Price Index adjustment.

*SPECIFIC LEASE PROVISIONS:*

- Liability insurance in an amount no less than \$1,000,000 per occurrence.
- Lessee shall not store any personal items or construct any improvements in the Public Trust easement that may impair the public uses of access, navigation, fishing, and lake-related recreational uses.
- Lessee shall provide proof of a Tahoe Regional Planning Agency (TRPA) permit and registration for all moorings, or proof that any unregistered and unpermitted mooring(s) have been removed on or before October 23, 2020.

## STAFF REPORT NO. 15 (CONT'D)

- Lessee expressly acknowledges and agrees that issuance of a lease does not substitute for, or provide preference in, obtaining authorizations from TRPA or any other regulatory agency for the improvements authorized by the Commission.

### **STAFF ANALYSIS AND RECOMMENDATION:**

#### **Authority:**

Public Resources Code sections 6005, 6216, 6301, 6501.1, 6503, and 6503.5; California Code of Regulations, title 2, sections 2000 and 2003.

#### **Public Trust and State's Best Interests Analysis:**

On February 1, 2010, the Commission authorized a Recreational Pier Lease to Joseph A. McCarthy, Trustee of the Joseph A. McCarthy Revocable Trust dated June 22, 1998; Stanley J. Pura and Jamii Eade Pura, as Trustees of the 2006 Pura Revocable Trust, dated February 28, 2006; and Bruce J. Pohle and Sharon Pohle, Trustees of the Bruce J. Pohle and Sharon Pohle 1970 Revocable Living Trust for the continued use and maintenance of an existing joint-use pier, two boat lifts, and four mooring buoys ([Item C07, February 1, 2010](#)).

On November 29, 2017, the Commission authorized the assignment of the lease to the Applicant ([Item C01, November 29, 2017](#)).

The lease expired on August 19, 2019. The Applicant is applying for a General Lease - Recreational Use for the continued use and maintenance of an existing joint-use pier, two boat lifts, and four mooring buoys.

The subject pier, boat lifts, and four mooring buoys are privately owned and maintained. The pier and four mooring buoys are used for the docking and mooring of boats and facilitates recreational boating. Recreational boating is a water-dependent use that is generally consistent with the common law Public Trust Doctrine. The California Legislature has identified private recreational boating facilities as an authorized use of Public Trust land (Pub. Resources Code, § 6503.5).

The pier and buoys have existed for many years at this location and are used for the docking and mooring of boats. The pier is built on steel pilings with the immediate area of the pier being flat with cobble and gravel. The two boat lifts are attached to the east side with a ramp to a catwalk on the west side. The topography and location of upland structures provides access for the pier and public access for pedestrians and lake-related activities at varying lake levels underneath the pier. The buoys are located

## STAFF REPORT NO. 15 (CONT'D)

directly lakeward of the upland property near the Applicants shared property line and occupy a relatively small area of the lake.

The proposed lease does not alienate the State's fee simple interest or permanently impair public rights. The lease is limited to a 10-year term, does not grant the lessee exclusive rights to the lease premises, and reserves an easement to the public for Public Trust-consistent uses. Upon termination of the lease, the lessee may be required to remove all improvements from State land and restore the lease premises to their original condition.

The proposed lease requires the lessee to insure the lease premises and indemnify the State for any liability incurred as a result of the lessee's activities thereon. The lease also requires the payment of annual rent to compensate the people of the State for the occupation of the public land involved.

For all the reasons above, staff believes the issuance of this lease will not substantially interfere with Public Trust needs at this location, at this time, and for the foreseeable term of the proposed lease; and is in the best interests of the State.

### **OTHER PERTINENT INFORMATION:**

1. Approval or denial of the application is a discretionary action by the Commission. Each time the Commission approves or rejects a use of sovereign land, it exercises legislatively delegated authority and responsibility as trustee of the State's Public Trust lands as authorized by law. If the Commission denies the application, the Applicant may be required to remove the joint-use pier, two boat lifts, and four mooring buoys and restore the premises to their original condition. Upon expiration or prior termination of the lease, the lessee also has no right to a new lease or to renewal of any previous lease.
2. This action is consistent with Strategy 1.1 of the Commission's Strategic Plan to deliver the highest levels of public health and safety in the protection, preservation, and responsible economic use of the lands and resources under the Commission's jurisdiction.
3. Staff recommends that the Commission find that this activity is exempt from the requirements of the California Environmental Quality Act (CEQA) as a categorically exempt project. The project is exempt under Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

STAFF REPORT NO. 15 (CONT'D)

Authority: Public Resources Code section 21084 and California Code of Regulations, title 14, section 15300 and California Code of Regulations, title 2, section 2905.

**EXHIBITS:**

- A. Legal Description
- B. Site and Location Map

**RECOMMENDED ACTION:**

It is recommended that the Commission:

**CEQA FINDING:**

Find that the activity is exempt from the requirements of CEQA pursuant to California Code of Regulations, title 14, section 15061 as a categorically exempt project, Class 1, Existing Facilities; California Code of Regulations, title 2, section 2905, subdivision (a)(2).

**PUBLIC TRUST AND STATE'S BEST INTERESTS:**

Find that issuance of the proposed lease will not substantially impair the public rights to navigation and fishing or substantially interfere with Public Trust needs and values at this location, at this time, and for the foreseeable term of the lease; is consistent with the Public Trust Doctrine; and is in the best interests of the State.

**AUTHORIZATION:**

Authorize issuance of a General Lease – Recreational Use to the Applicant beginning August 20, 2019, for a term of 10 years, for the continued use and maintenance of an existing joint-use pier, two boat lifts, and four mooring buoys, as described on Exhibit A and shown on Exhibit B (for reference purposes only) attached and by this reference made a part hereof; annual rent in the amount of \$2,769 with an annual Consumer Price Index adjustment; and liability insurance in an amount no less than \$1,000,000 per occurrence.

**EXHIBIT A**

**LEASE 3652.1**

**LAND DESCRIPTION**

Five (5) parcels of submerged land located in the bed of Lake Tahoe, lying adjacent to Lot 2 fractional Section 28, Township 16 North, Range 17 East, MDM., as shown on Official Government Township Plat approved November 10, 1865, County of Placer, State of California, and more particularly described as follows:

**PARCEL 1 – JOINT-USE PIER**

All those lands underlying an existing joint-use pier, catwalk and two boat lifts lying adjacent to that parcel as described in that Grant Deed recorded December 23, 2016 as Document Number 2016-0014609 and that parcel as described in that Grant Deed recorded December 19, 2013 as Document Number 2013-0115864 in Official Records of said County.

TOGETHER WITH any applicable impact area(s).

EXCEPTING THEREFROM any portion(s) lying landward of elevation 6223 feet LTD on the shoreline of said Lake Tahoe.

**PARCEL 2, 3, 4 & 5 – 4 BUOYS**

Four (4) circular parcels of land, being 50 feet in diameter, underlying four (4) existing buoys lying adjacent to those parcels as described in said Grant Deeds of said County.

Accompanying plat is hereby made part of this description.

**END OF DESCRIPTION**

Prepared September 11, 2019 by  
the California State Lands Commission Boundary Unit.

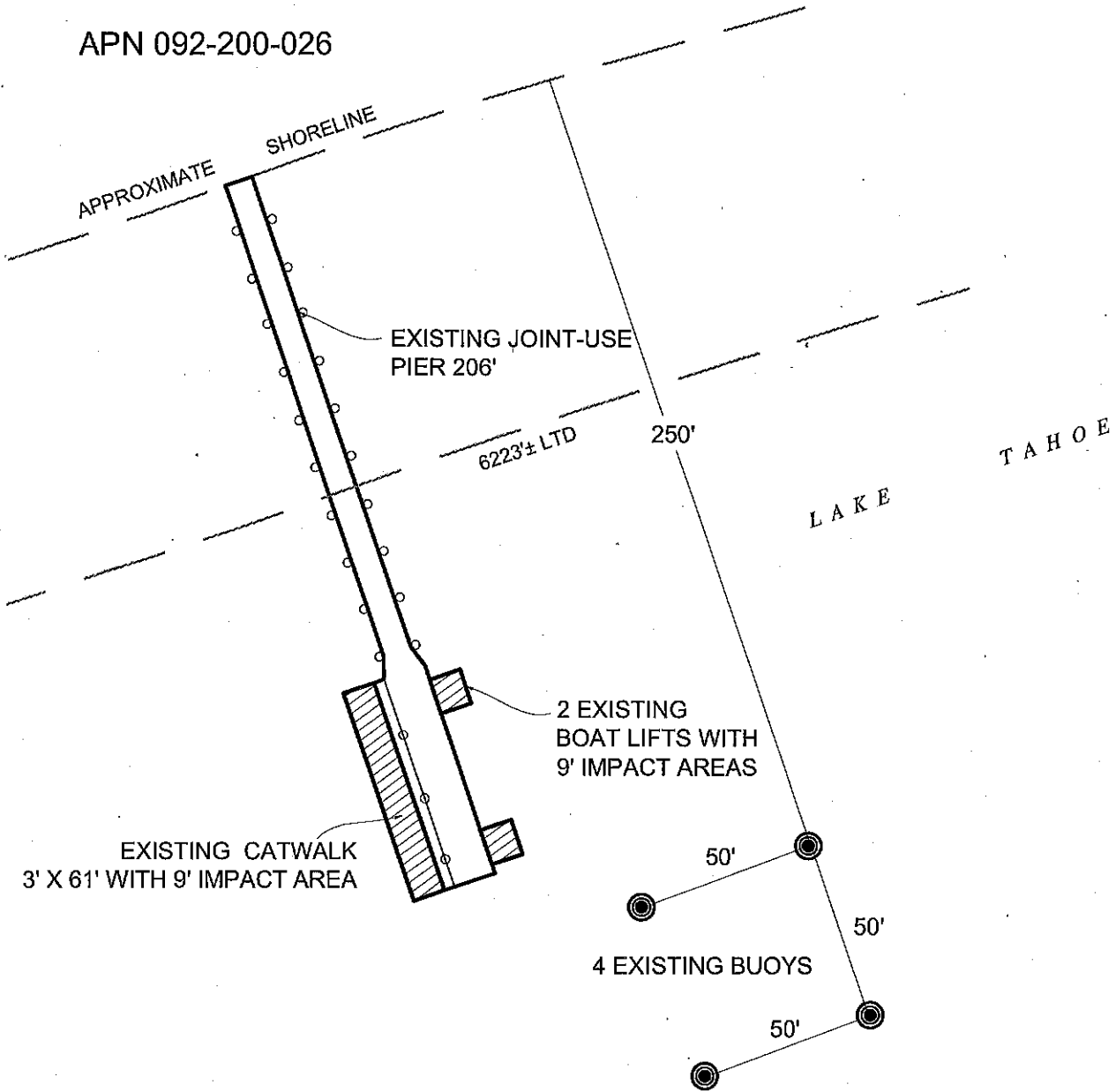


NO SCALE



APN 092-200-025

APN 092-200-026



### EXHIBIT A

Page 2 of 2

MJJ 9/18/19

LAND DESCRIPTION PLAT  
LEASE 3652.1, BRENNAN &  
McCARTHY TRUST  
PLACER COUNTY

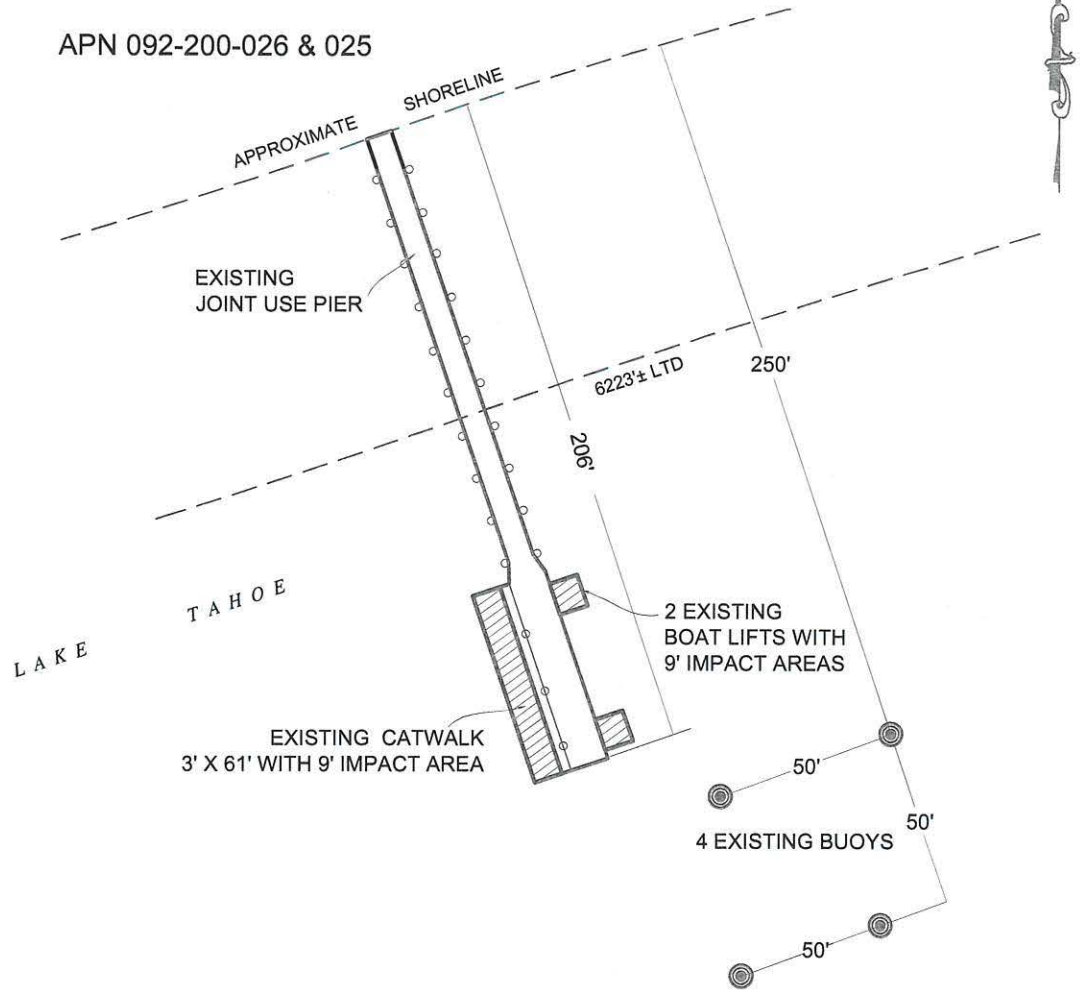
CALIFORNIA STATE  
LANDS COMMISSION



NO SCALE

# SITE

APN 092-200-026 & 025



4170 & 4176 FERGUSON AVE., NEAR CARNELIAN BAY

NO SCALE

# LOCATION



MAP SOURCE: USGS QUAD

This Exhibit is solely for purposes of generally defining the lease premises, is based on unverified information provided by the Lessee or other parties and is not intended to be, nor shall it be construed as, a waiver or limitation of any State interest in the subject or any other property.

# Exhibit B

LEASE 3652.1  
 MCCARTHY TRUSTEE &  
 BRENNAN  
 APN 092-200-025 & 026  
 GENERAL LEASE -  
 RECREATIONAL USE  
 PLACER COUNTY



MJJ 9/11/19